

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	

**COMMENTS OF DISH NETWORK L.L.C., ECHOSTAR  
TECHNOLOGIES L.L.C. AND HUGHES NETWORK SYSTEMS, LLC**

Before expanding the base of services that contribute to the universal service fund (“USF”), the Commission should complete its work on the structure of the Connect America Fund (“CAF”). Until that work is finished, it is difficult for satellite broadband providers like DISH Network L.L.C., EchoStar Technologies L.L.C., and Hughes Network Systems, LLC (collectively, “EchoStar”) to evaluate whether the new contribution regime is “equitable and non-discriminatory” as required by statute. In these comments on the Commission’s April 30, 2012 *Further Notice of Proposed Rulemaking* (“FNPRM”) <sup>1</sup>, Echostar urges the Commission to give careful consideration to the ultimate structure of the CAF, and whether satellite broadband providers, will be eligible to participate in the program before deciding whether to impose USF contribution requirements on satellite broadband providers.

The Commission is modernizing the distribution of high-cost and low-income universal service support to keep pace with market developments.<sup>2</sup> These reforms are needed because of

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<sup>1</sup> *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. April 30, 2012) (“FNPRM”).

<sup>2</sup> See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*), pets. for review pending; *Lifeline and Link Up Reform and Modernization Order*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, FCC 12-11 (rel. Feb. 6, 2012).

the dramatic changes in the communications marketplace since USF was created 15 years ago. The communications market is evolving with customers migrating from traditional telecommunications services to new platforms, including broadband, as advances are made in technologies and services. Important issues concerning the configuration, implementation and scope of the CAF, however, remain undecided. For example, the Commission has not finalized the structure of the CAF Remote Areas Fund (“RAF”), which is intended to support the deployment of alternative technology platforms such as satellite and unlicensed wireless services to the most remote areas of the nation.<sup>3</sup> Similarly, the Commission has not specified how CAF Phase II support will be distributed in rate-of-return areas when the incumbent local exchange carrier (“ILEC”) declines to make a statewide commitment to receive support.<sup>4</sup> These issues, among others, will dramatically affect which service providers are able to participate in the CAF and how CAF support is distributed.

As Echostar and other satellite providers have argued, the USF contribution mechanism must be updated to better reflect the marketplace. The USF contribution base has been shrinking because some of the services to which the market is trending are not subject to contribution obligations. Consequently, EchoStar recognizes that the Commission will expand the contribution base to maintain the sustainability of the USF, particularly as the fund transitions to support broadband services.<sup>5</sup>

The FNPRM includes several proposals that likely would require satellite broadband providers such as EchoStar to contribute to the USF. These include the specific proposal to

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<sup>3</sup> See, e.g., SBP CAF Comments at 2-9; SBP CAF Reply Comments at 3-16.

<sup>4</sup> See, e.g., SBP CAF Comments at 12-17; SBP CAF Reply Comments at 18-20.

<sup>5</sup> See FNPRM at ¶ 4.

require contributions from broadband Internet access providers,<sup>6</sup> the proposal to require contributions broadly from any telecommunications or information service that includes a transmission component,<sup>7</sup> and the proposal to move from a revenues-based contribution assessment system to one based upon connections.<sup>8</sup> Whether these proposals will be consistent with the statutory standard of an “equitable and non-discriminatory” contribution mechanism will depend on whether such contributions are used to support efficient technology, and not funneled to support less-efficient competitors’ ability to serve satellite broadband providers’ target customers.

EchoStar supports the Commission’s goal of extending quality broadband service to households that are unserved or underserved in the most efficient and cost-effective manner possible. Echostar has invested its own funds for years to develop broadband service for the purpose of serving the customers the CAF intends to target. Indeed, the business models of satellite broadband providers mirror the goal of the USF – to reach consumers in unserved and underserved areas. EchoStar and other satellite providers, however, have expressed concern that the newly created CAF, if not structured properly, could subsidize less-efficient terrestrial technologies to provide service to the same customers that satellite broadband providers are investing their own funds to serve.<sup>9</sup> In EchoStar’s experience, consumers in remote and

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<sup>6</sup> *See id.* at ¶ 67.

<sup>7</sup> *See id.* at ¶¶ 74-75.

<sup>8</sup> *See id.* at ¶ 220.

<sup>9</sup> *See, e.g.,* Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (Jan. 18, 2012) (“SBP CAF Comments”); Reply Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (Feb. 17, 2012) (“SBP CAF Reply Comments”).

unserved areas are price-sensitive when purchasing broadband services.<sup>10</sup> Consequently, supporting terrestrial technologies in areas where satellite is more efficient will have a significant impact on satellite broadband providers' business models – while also wasting public funds on costlier technologies.

As a result, it is critical that all broadband service providers – including those that use satellite technologies – have an equitable opportunity to participate in all phases of the CAF.<sup>11</sup> In fact, competitive neutrality has been a guiding principle of the universal service mechanism since its inception under Section 254(b)(7) of the Communications Act of 1934, as amended.<sup>12</sup> The Commission committed then to adopting rules that would minimize competitive and technological bias, recognizing that they would “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”<sup>13</sup> Only an inclusive approach to distribution can help ensure that the program is competitively neutral and that scarce federal universal service funding supports the most efficient broadband technology – which, in many instances, is satellite.

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<sup>10</sup> For example, Hughes Network Systems, LLC (“Hughes”) started deploying high-speed satellite broadband service under a Rural Utilities Service grant in 2010. Qualified consumers received hardware and installation at no cost and a 33 percent discount on monthly service charges. After the discounts became available, Hughes saw more than 104,000 households get broadband connections.

<sup>11</sup> See generally, SBP CAF Comments; SBP CAF Reply Comments; Joint Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (Apr. 18, 2011); Joint Reply Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (May 23, 2011).

<sup>12</sup> See 47 U.S.C. § 254(b)(7).

<sup>13</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 (1997) (subsequent history omitted) (“*First USF Order*”).

It would not be competitively neutral or equitable, nor would it be consistent with an “equitable and non-discriminatory” contribution mechanism, to mandate that satellite broadband providers contribute to the USF if they are arbitrarily excluded from receiving support in areas where they are the most-efficient provider, and high-cost funding instead is channeled to subsidize their less-efficient competitors to extend service to areas where satellite service would be more efficient.

For example, if the Commission narrowly defines the geographic scope of the “remote areas” that are eligible for support under the RAF, it would exclude large swaths of satellite broadband providers’ target market from support for efficient satellite broadband service, and subsidize less-efficient terrestrial competitors to serve those areas. This would impose an unnecessary burden on the USF (and thus on consumers), and would leave satellite broadband providers able to obtain support only to serve small, non-contiguous geographic areas.

Similarly, there is a concern that the rules implementing the RAF not be skewed to provide competitive advantages to other terrestrial competitors, such as community wireless networks. It would be unfair to require satellite broadband providers to contribute to USF to subsidize other terrestrial service providers in immediately adjacent areas where satellite broadband providers are precluded from competing on a level playing field.

It also will be inequitable to require satellite broadband providers to contribute to the USF if the Commission does not make support broadly available in CAF Phase II areas where the ILEC declines to make a statewide service commitment, in reasonably sized bidding areas, through a reverse auction mechanism.

In arguing that USF contributions should not be required from satellite broadband providers if support is not available to them on an equitable and non-discriminatory basis,

EchoStar recognizes that not all USF contributors will be eligible to receive support. The scenarios discussed above, however, are not analogous to situations where the Commission has imposed USF contribution requirements on carriers that are ineligible to receive high-cost support, such as paging carriers.<sup>14</sup> Unlike those service providers, satellite broadband providers will be capable of providing the supported services. Indeed, satellite broadband providers will be the most efficient providers of the supported services in many areas. It is one thing to require contributions from carriers that will benefit from USF, even if they cannot provide the supported services. It would be unprecedented, however, to hold a class of capable providers arbitrarily at bay while expecting them to help fund the provision of government support to their competitors.<sup>15</sup>

In sum, whether it is equitable to require satellite broadband providers to contribute to the USF will be a fact-based inquiry that depends on the ultimate structure of the CAF and the RAF. Accordingly, the Commission should withhold action on whether to expand USF contribution requirements to satellite broadband providers until more is known about the CAF and the RAF. Once interested parties have an opportunity to review and comment on these mechanisms, the

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<sup>14</sup> *First USF Order*, 12 FCC Rcd at 9188 ¶ 805. Paging providers, as “telecommunications carriers,” also are “mandatory” USF contributors; thus, the Commission’s discretion to exempt them was limited. *Id.* Satellite broadband providers are not mandatory USF contributors. Thus, if they are required to contribute, the Commission will have to support that conclusion with a public interest determination. 47 U.S.C. § 254(d).

<sup>15</sup> In fact, in requiring paging providers to contribute to the USF, the Commission specifically found that USF support would not be available to paging carriers’ competitors to compete in the paging marketplace. *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45; Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5465 ¶ 264 (1997).

Commission will be able to make a fair and equitable decision as to whether satellite broadband providers should contribute to the USF.

### **CONCLUSION**

Consistent with these comments, EchoStar requests that the Commission take into consideration the ultimate structure of the CAF implement contribution reform before deciding whether to impose USF contribution requirements on satellite broadband providers.

Respectfully submitted,

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